IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 31981 of 2005(G)

PETITIONER:

T.O.THOMAS, AGED 91 YEARS,
S/O. LATE OMMEN, RESIDING AT BLOCK NO.235,
VENKOLLA, MADATHARA P.O., KADAKKAL, KOLLAM.

BY ADV. SRI.JOHNSON GOMEZ

RESPONDENTS:
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1. **UNION OF INDIA, REPRESENTED BY**
   THE SECRETARY, MINISTRY OF HOME AFFAIRS,
   LOK NAYAK BHAVAN, KHAN MARKET, NEW DELHI 110 003.

2. **THE STATE OF KERALA REPRESENTED BY**
   THE SECRETARY TO GOVERNMENT, DEPARTMENT OF
   GENERAL ADMINISTRATION, SECRETARIAT,
   TRIVANDRUM.

3. **THE DISTRICT COLLECTOR, KOLLAM.**

BY ADV. SRI.C.S.ABDUL SAMMAD, ADDL.CGSC
GOVERNMENT PLEADER SRI.K.V.MANOJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.31981/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE SALIENT FEATURES OF SWATHANTRATHA SAINIK SAMMAN PENSION SCHEME 1980 ISSUED BY THE 1ST RESPONDENT.

EXT.P2:- COPY OF THE JUDGMENT DT.3RD JANUARY 1940 IN SC 78 OF 1114 OF THE SESSIONS COURT, KOLLAM.

EXT.P3:- COPY OF THE COMMUNICATION ISSUED BY THE 1ST RESPONDENT DT. 22ND MARCH 1982.

EXT.P4:- COPY OF THE REPRESENTATION DT. 7.3.88 ALONG WITH PERFORMA FOR RECEIVING INFORMATION IN RESPECT OF REJECTED CASES.

EXT.P5:- COPY OF THE APPLICATION DT. 23.7.85 OF THE 2ND CLASS MAGISTRATES COURT, KOTTARAKKARA.

EXT.P6:- COPY OF THE CERTIFICATE DT. 12TH JUNE 1984 ISSUED BY SRI.K.RAMANKUTTY.

EXT.P7:- COPY OF THE CERTIFICATE DT. 16TH JULY 1981 ISSUED BY SRI.O.KRISHNAN.

EXT.P8:- COPY OF THE JUDGMENTOF THIS HON'ble COURT IN OP. NO.20232/02 DT. 27TH MAY 2002.

EXT.P9:- COPY OF THE ORDER NO. 52/CC/K/32/200-FF(SZ) DT. 16TH OCTOBER 2002 ISSUED BY THE 1ST RESPONDENT

EXT.P10:- COPY OF THE REPRESENTATION DT. 18TH SEPTEMBER 2005 ALONGWITH THE POSTAL ACKNOWLEDGEMENT RECEIPT.

/TRUE COPY/

P.S. TO JUDGE

tss

T.R. Ramachandran Nair, J.

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W.P.(C).NO.31981 of 2005-G

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Dated this the 31st day of July, 2007

JUDGMENT

The writ petitioner who is in his ninetees, has approached this court seeking for a direction to the respondents to consider his case for grant of Swathantrata Sainik Samman Pension under the relevant scheme. Ext.P1 is the copy of S.S.S. Pension Scheme 1980. According to the petitioner, he had gone underground for a period of more than 8 months from 25.2.1114 M.E. To 20.11.1114 M.E. and an arrest warrant was issued in P.E.No.4/114 from the Judicial Second Class Magistrate's Court in connection with the Civil Disobedience Movement. The said P.E. No.4/114 resulted in Sessions Case No.78/1114 M.E. before the Sessions Court, Kollam. Ext.P2 is the judgment in the above case. The petitioner's application was rejected by Ext.P3 for three different reasons, viz., that the State Government has not recommended his case, that he has not produced any acceptable documentary evidence relating to his claim of underground sufferings with reference to any official records and that the certificates issued by Shri G. Ramakutty and Shri A. Jamal Labba are not acceptable as they have not suffered five years imprisonment. The petitioner thereafter submitted

Ext.P4 again to the first respondent, as the conditions as regards the certifiers have been relaxed to imprisonment for two years. The petitioner has produced as Ext.P5, his application before the Magistrate's Court seeking copy of the records to show that he was an accused in the case in question. That was rejected stating that no records are available. Exts.P6 and P7 are Personal Knowledge Certificates issued by the 5th and 20th accused in Ext.P2 judgment. They are K. Ramankutty and O. Krishnan. They have duly certified that the petitioner had remained underground for a period of more than six months for the period from 20.2.1114 to 21.12.1114. After receipt of Ext.P9, the petitioner has filed Ext.P10 before the District Collector, Quilon again for recommending his case for the benefit of the pension under the Central Scheme.

2. Learned counsel for the petitioner submitted that in the light of Ext.P5 and in the light of the Personal Knowledge Certificates, the petitioner's case needs recommendation after duly considered by the District Collector and by the State Government. It is pointed out that as far as the production of official records are concerned, as they are not available in the concerned court, the petitioner is unable to procure the same and produce before the respondents. In these circumstances, he has produced Ext.P5. It is also pointed out that Exts.P6 and P7 have been issued by leading freedom fighters who were accused in the criminal case mentioned in Ext.P2.

Therefore, those people who had been accused along with the petitioner, have duly certified the requirements for enabling the petitioner to claim the benefit of the pension.

3. An application for pension under the Freedom Fighters' Pension Scheme has to be considered by the authorities in a liberal manner and also giving due respect and honour to the freedom fighters, as held by the Supreme Court in various decisions.

4. Their Lordships of the Supreme Court in **Mukundlal Bhandari v. Union of India and others** (1993 SCW 2508) had held that the object of the Scheme was to honour and where it was necessary also to mitigate the sufferings of those who had given their all for the country in the honour of its need. The spirit of the scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. The scheme should retain its high objective with which it was motivated. In **Gurdial Singh v. Union of India** (AIR 2001 SC 3881), it was held that:

> "It should not be forgotten that the persons intended to be covered by the scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme.
>
> The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of parties. As the object of the

> scheme is to honour and to mitigate the sufferings of those who had given their all for the country a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking protection under the Scheme."

The same principle was followed in **Bhaurao Dagdu Paralkar v. State of Maharashtra** (AIR 2005 SC 3330), in which their Lordships held that the genuine freedom fighters deserve to be treated with reverence, respect and honour.

5. Therefore, there will be a direction to the District Collector, Kollam to issue the N.A.R.C. as requested for by the petitioner in Ext.P10 and to forward the same to the second respondent herein for recommending the same to the Government of India. The same shall be done within a period of two months from the date of receipt of a copy of this judgment. On receipt of the application and other records from the State Government, the first respondent will consider the matter on merits and pass appropriate orders within a further period of three months thereafter.

The writ petition is disposed of in the above terms. No costs.

(T.R. Ramachandran Nair, Judge.)

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